

**THIRD AMENDMENT TO
THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY, THE
CITY OF SAN MATEO, AND THE PENINSULA CORRIDOR JOINT POWERS
BOARD FOR THE 25TH AVENUE GRADE SEPARATION AND RAIL
REALIGNMENT PROJECT**

THIS THIRD AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY, THE CITY OF SAN MATEO, AND THE PENINSULA CORRIDOR JOINT POWERS BOARD FOR THE FINAL RIGHT OF WAY AND CONSTRUCTION PHASE FOR THE 25TH AVENUE GRADE SEPARATION AND RAIL REALIGNMENT PROJECT is made as of the ____ day of _____, 2021, by and between the San Mateo County Transportation Authority (TA), the City of San Mateo (Sponsor), and the Peninsula Corridor Joint Powers Board (JPB), referred to herein individually as “Party” and jointly as “Parties.”

WHEREAS, the Parties entered into a MOU for the Preliminary Engineering/Environmental (PE/ENV) phase of work on July 11, 2014, and the Parties entered into a First Amendment to the MOU on March 3, 2016 for the Final Design and Right of Way (PS&E and ROW) phases of work for the 25th Avenue Grade Separation and Rail Realignment Project (Project); and

WHEREAS, on October 6, 2016, the TA programmed and allocated \$65.3 million in Measure A Grade Separation Program Category funds to complete the ROW and Construction phases of work for the Project based on an estimated budget of \$180 million to complete the Project; and

WHEREAS, the Parties entered into a Second Amendment to the MOU on August 10, 2017 for ROW and Construction phases of work to complete the Project, including utility relocation work and related costs;

WHEREAS, unforeseen design and construction challenges, including but not limited to major utility relocation of lines belonging to Union Pacific Railroad, AT&T, PG&E and Cal Water, and removal of contaminated soil have resulted in a Project cost increase from \$180 million to \$205.9 million; and

WHEREAS, the City has submitted a request for \$23.8 million in additional Measure A Grade Separation Program Funds, which, along with an additional \$2.1 million in City funds, would cover the \$25.9 million Project cost increase; and

WHEREAS, on January 7, 2021, the TA programmed and allocated \$23.8 million in Measure A Grade Separation Program Category funds (Measure A Funds) to complete the Construction phase of the Project, through Resolution 2021-1; and

WHEREAS, the Parties' total Project contributions for the PE/ENV, PS&E, ROW and Construction phases for the Project, based on current Project cost estimates, are described in the Scope of Work Budget/Scope of Funding Table in Exhibit A-3; and

WHEREAS, the Parties desire to amend the MOU to allow the Sponsor and the JPB to seek reimbursement for Project costs incurred to complete the ROW and Construction phases of work.

IT IS HEREBY AGREED by the Parties that the MOU is revised and amended as follows:

- 1. EFFECTIVE DATE.** This Third Amendment is effective as of the day and year first written above.
- 2. SCOPE OF WORK.** Section A.2, Scope of Work, of the MOU is revised to add the following paragraph d to the end of this section:
 - d. Completion of the ROW and Construction phases, including several significant and unforeseen tasks not fully funded under the Second Amendment to the MOU, as described in Exhibit A-3, "Scope of Work Information," which is attached to this Third Amendment to the MOU and incorporated herein by this reference.

- 3. FUNDING COMMITMENT.** Section B.1. of the MOU is revised to add the following paragraph to the end of this section:

The phase of work set forth in Exhibit A-3 has an estimated Scope of Work cost of \$25.9 million which brings the total Project cost up from \$180 million to \$205.9 million. The TA is responsible for contributing \$23.8 million for the Construction phase of work. Sponsor is responsible for contributing, or securing the contribution of, the remaining cost of this phase of work, and any additional costs required for completion of the Project, estimated to be \$2.1 million. The TA's funding commitment under this MOU in no way establishes a right for the Sponsor to receive additional funding from the TA.

- 4. TERM OF MOU.** Section C.1 of the MOU, Term of MOU, is revised and restated to read:

1. Term of MOU. This MOU is effective upon the Execution Date. This MOU, as amended, will terminate upon the earliest of: (a) six months after the written acceptance/endorsement of the Sponsor of the completion of the Scope of Work, (b) termination by Sponsor, the JPB or the TA pursuant to section C.3, C.4, C.5, or C.6, or (c) two years and six months from the date of execution of the Third Amendment to this MOU.

- 5. TIME OF PERFORMANCE.** Section C.2 of the MOU, Time of Performance, is revised and restated to read:

2. Time of Performance. The Project Scope of Work must be completed no later than two years from the date of the execution of the Third Amendment to this MOU.

- 6. JPB RESPONSIBILITIES.** Section E of the MOU, JPB Responsibilities, is revised to add the following new paragraph E.4 after paragraph E.3:

4. The JPB is the lead implementing agency responsible for delivering the Scope of Work described in Exhibit A-3 for the ROW and Construction Phases of the Project and agrees to:
 - a. Coordinate utility and pipeline relocation.
 - b. Coordinate additional administrative, materials, and labor escalation costs due to the overall delay in completion of the Project.
 - c. Oversee re-design of affected Project elements to accommodate the newly relocated Union Pacific Third Party Fiber Optic Cable, and AT&T lines.
 - d. Oversee utility connections to new Caltrain facilities.
 - e. Coordinate removing contaminated soil and improving ground conditions related to unsuitable and unforeseen subsurface issues.
 - f. Oversee ongoing field adjustments to various structural components, roadways, the Hillsdale station, and the station parking lot.
 - g. Oversee upcoming change order work and open risk register items, including: COVID-19 related claims and differing site conditions.
 - h. Oversee modifying the design and eventual construction of a set-out track to address nearby community concerns.
 - i. Provide technical Project oversight and management.
 - j. Coordinate with regulatory and review agencies.
 - k. Invoice the TA and Sponsor, and assist the Sponsor with progress reporting to the TA.
 - l. Support public outreach efforts.
 - m. Coordinate with other Caltrain projects.

7. SPONSOR RESPONSIBILITIES. Section F of the MOU, Sponsor Responsibilities, is revised to add the following new paragraph g to the end of paragraph 2.1:

- g. Secure all non-Measure A funding to complete the final ROW and Construction phases of the Project as described in Exhibit A-3.

8. EFFECT. Except as and solely to the extent amended by this Third Amendment, the MOU, as previously amended, will continue in full force and effect in accordance with their terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be executed by the persons authorized to act in their respective names on the day and year first written above.

CITY OF SAN MATEO

By: _____
Name: Drew Corbett
Its: City Manager

Approved as to Form:

City Attorney for the City of San Mateo

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Name: Michelle Bouchard
Its: Executive Director (Interim)

Approved as to Form:

Attorney for the JPB

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name: Carter Mau
Its: Executive Director (Interim)

Approved as to Form:

Attorney for the TA

EXHIBIT A-3: SCOPE OF WORK INFORMATION

25th Avenue Grade Separation and Rail Realignment Project Right-of-Way and Construction

Sponsoring Agency:

City of San Mateo
Jay Yu, Engineering Manager
330 West 20th Avenue
San Mateo, CA 94403
(650) 522-7323; jyu@cityofsanmateo.org

Lead/Implementing Agency:

Peninsula Corridor Joint Powers Board (JPB)
Michelle Bouchard, Acting Executive Director
1250 San Carlos Ave, P.O. Box 3006
San Carlos, CA 94070

Contact:

Rob Barnard, Deputy Chief, Rail Development
Peninsula Corridor Joint Powers Board (JPB)
1250 San Carlos Ave, P.O. Box 3006
San Carlos, CA 94070
BarnardR@samtrans.com, (650)508-7783

Project Description and Scope of Work:

The overall Project will construct a two-track elevated rail alignment grade separating the existing at-grade crossings at 25th Avenue in San Mateo, California. The elevated rail alignment will require the relocation of the existing Hillsdale Caltrain Station northward to a location between 28th and 31st Avenues. The elevated rail alignment also creates an opportunity to make new street connections between El Camino Real and Delaware Street at 28th and 31st Avenues.

While the overall Project consists of creating a two-track elevated alignment, it will be designed so that four (4) tracks could be incorporated in the future if the section is selected for construction of passing tracks.

The Project has completed the preliminary engineering/environmental and final design phases, which include the layout of the relocated Hillsdale Caltrain Station.

The Second Amendment to the MOU included work involving the acquisition of property and utility relocation. Since 2017, there have been significant unforeseen circumstances during the construction and ROW phases which have delayed the Project and increased costs. For instance, the work has been delayed due to utility relocations, additional utility connections, removal of contaminated soil, differing site conditions, and modifications to the design and eventual construction of a set-out track. Additionally, higher than anticipated costs associated with these unforeseen circumstances and additional administrative, materials, and labor escalation costs due

to the overall delay in completion of the Project have increased Project costs from \$180 million to \$205.9 million.

Work to be completed under this Third Amendment to the MOU addresses the significant and unforeseen circumstances described above. The Scope of Work will also include parking track design and construction, design and construction of a sound wall, extension of an access road, tree re-planting and associated administrative costs.

Project Schedule:

	<u>Begin</u>	<u>End</u>
Pre-Project Planning	Completed	
PE/Environmental	Completed	
PS&E	Completed	
Right-of-Way	07/10/17	09/10/2021
Construction	12/01/2017	09/10/2021

Scope of Work Budget/Funding Table

	TA Responsibility		Sponsor Responsibility						Total (in \$M)
Phase	Measure A Funding (in \$M)	%	Sponsor Local Funds (in \$M)	%	CHSRA (in \$M)	%	Caltrans Section 190 (in \$M)	%	
PE/ENV ¹	\$3.70	78.72%	\$1.00	21.28%					\$4.70
PSE/ROW	\$5.00	50.00%	\$5.00	50.00%					\$10.00
ROW/Construction ²	\$89.10	46.6%	\$8.10	4.23%	\$84	43.93%	\$10	5.23%	\$191.20
Total	\$97.80	47.5%	\$14.1	6.85%	\$84	40.8%	\$10	4.86%	\$205.9

Footnotes

- 1) \$200,000 of the Sponsor's \$1 million match from the PE/ENV phase was from in-kind staff support.
- 2) Sponsor costs for in-kind staff support during the ROW/Construction phase, as further described in the Sponsor Responsibilities, are anticipated to be \$225,000 and may be subject to change during the course of the Project upon mutual agreement by the Parties' authorized representatives. These costs will be paid first from: 1) A balance of \$94,066 of Sponsor in-kind staff support capacity carried over from the PE/ENV and PS&E/ROW phases, and then 2) \$130,934 from the contributions of other fund sources listed in the Table above under "Sponsor Responsibility."
- 3) As part of the 3rd Amendment, the City contributed an additional \$2.1M to the ROW/Construction phase. It should be noted \$100,000 of that is for in-kind staff support to complete the project including the scope of work for the set-out track.

Measure A Project Cash Flow Projection

The cash flow projection is provided for informational purposes only and includes projections for both Sponsor and JPB activities. Total costs listed for right of way and construction are best

estimates and may be subject to change within the overall total amount of Measure A funds allocated for the Scope of Work.

Phase/Activity (e.g. Planning, PSE, Construction)	FY21				Subtotal FY21	FY22				Subtotal FY22
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
ROW/Construction				\$10,800,000	\$10,800,000	\$10,000,000	\$3,000,000			\$13,000,000
					\$0					\$0
					\$0					\$0
Total	\$0	\$0	\$0	\$10,800,000	\$10,800,000	\$10,000,000	\$3,000,000	\$0	\$0	\$13,000,000
Cumulative to Date	\$0	\$0	\$0	\$10,800,000		\$20,800,000	\$23,800,000	\$23,800,000	\$23,800,000	

Phase/Activity (e.g. Planning, PSE, Construction)	FY23				Subtotal FY23	FY21	FY22	FY23	Subtotal for FY21-FY23	Project Total
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)						
					\$0				\$0	\$23,800,000
					\$0				\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$23,800,000

Operating Responsibility: JPB

Maintenance Responsibility: JPB

Project Implementation Responsibility: JPB

Project Oversight Responsibility: JPB